

more quaternary ammonium salts and one or more sulfates are present, one of quaternary ammonium salts and sulfates.--

### REMARKS

Claims 1-8 are presently pending in the application.

In Paper No. 3, the Examiner has formally rejected claims 4 and 5 under 35 U.S.C. § 112, second paragraph, as being indefinite with regard to the phrase "other substances" in line 3 of claim 4. Claim 4 has been amended to positively recite that the other substances which may form a hydrophobic substance may be a perfumes, hydrophobic, water-insoluble solvents, quaternary ammonium salts, or sulfates. Support for this amendment may be found in the specification at least in paragraph 0013. No new matter has been added by this amendment. Since claim 4 has now been amended to positively recite these other substances, reconsideration and withdrawal of the rejection are respectfully requested.

The Examiner has rejected claims 1-8 under 35 U.S.C. § 102(b) as being anticipated by European Patent Application No. 0 116 422 of Harmer ("Harmer"). Claims 1-3 and 8 have been rejected under 35 U.S.C. § 102(b) as being anticipated by European Patent Application No. 0 175 485 of Cook ("Cook"). Claims 1-3 and 6-8 have been rejected under 35 U.S.C. § 102(b) as being anticipated by British Patent No. 1,247,189 ("GB '189"). Finally, the Examiner has rejected claims 1-8 under 35 U.S.C. § 102(a) as being anticipated by WO 99/47635 of Jeschke ("Jeschke '635"). Applicants respectfully traverse these rejections and the arguments in support thereof for the reasons set forth below, and request reconsideration and withdrawal of the rejections.

#### Rejection Under § 102(b) Based on Harmer

The Examiner argues that Harmer teaches hair or body shampoo compositions having an upper aqueous layer and a lower aqueous layer which are temporarily dispersible one

in the other upon agitation of the composition, wherein the upper layer contains at least one detergent and the lower layer contains sodium hexametaphosphate. In Example 1, Harmer allegedly teaches a hair shampoo prepared by mixing thoroughly together with stirring a 40% aqueous solution of triethanolamine lauryl sulphate and a 40% aqueous solution of sodium hexametaphosphate, followed by coconut diethanolamide, ethoxylated cocomoethanolamide and perfume, and filling directly into bottles. The Examiner concludes that Harmer teaches all of the claimed elements. Applicants respectfully traverse this rejection as follows.

The present invention is directed to a method of manufacturing liquid cleaning or detergent compositions which separate into at least two aqueous phases in the rest condition. The method involves producing at least two separate preliminary mixtures, which are stable between 0 and 40 °C, and not mixing them until immediately prior to or upon filling into the packaging container.

In contrast, the method taught by Harmer for preparing the hair and body shampoo compositions does not involve producing at least two preliminary mixtures and maintaining them separately until they are mixed immediately prior to or upon filling the composition into containers. Rather, Harmer teaches at page 8, lines 22-28 that,

the composition was prepared by mixing thoroughly together with stirring all the components with the exception of coconut diethanolamide... which were preblended prior to addition to the rest of the components. The composition was filled directly into bottles whilst maintaining the stirring or the final filling operation can be from a well stirred reservoir.

Harmer thus suggests that the components may be mixed at any time prior to filling into bottles, provided that stirring is continued.

Harmer further teaches,

preferably, the dispersion resulting from the agitation of the layers is stable for sufficient time to allow uniform filling of the compositions into containers so that on standing the relative ratios of the phases within the containers are consistent. This avoids the problem of having to fill each container separately with

predetermined amounts of two different concentrates. (page 3, line 26 to page 4, line 3)

This “problem” is the basis for Applicants’ invention, in which the containers may be filled separately with predetermined amounts of the two preliminary mixtures. (See Examples 1 and 2 of the present specification, in which one layer is filled into the bottle on top of the other layer.) Harmer does not teach or suggest preparing two separate mixtures, and further teaches away from maintaining the mixtures separately or as claimed and filling them into the container separately or by mixing the components with agitation immediately prior to filling. Because the method of Harmer is in complete contrast with the presently claimed method, Harmer does not anticipate the present claims. Reconsideration and withdrawal of the rejection are respectfully requested.

*Rejection Under § 102(b) Based on Cook*

The Examiner argues that Cook teaches a hair or body shampoo having an upper aqueous layer and a lower aqueous layer which are temporarily dispersible one in the other upon agitation of the composition, in which the upper layer contains at least one detergent and the lower layer contains a sequestering agent. In Example 1, Cook allegedly teaches a composition containing sodium lauryl ether (1) sulphate (70% active), sodium C<sub>14-16</sub> olefin sulphonate (35% active), perfume and water, and, after standing, the composition exhibited two liquid phases in the volume ratio of 70:30. The method of preparing the composition allegedly involves mixing together the surfactant, water and colorants, then adding the sequestering agent (page 15, lines 20-27). The Examiner thus concludes that Cook teaches all of the claimed elements. Applicants respectfully traverse the rejection as follows.

Similar to Harmer, Cook is also directed to a hair or body shampoo composition containing two aqueous phases which are temporarily dispersible upon agitation. In the composition of Cook, the top layer contains a detergent and the lower layer contains a

sequestering agent. The preparation of the compositions is described at page 15, lines 20-27, which involves mixing the surfactant, water and colorants with stirring and gentle heating until a homogeneous mixture is formed. The sequestering agent is then added with gentle heating and the mixture is cooled. Finally, perfume is added and the pH is adjusted with citric acid.

The method of Cook thus involves adding the components in a particular order with stirring, heating and cooling, and does not teach maintaining the two phases separately until prior to filling the package. In fact, the sequestering agent which comprises the lower layer is not added last, but between the surfactant/water/colorants and the perfume/citric acid components. Furthermore, Cook discloses at page 9, lines 24-29, that the lower layer is largely dissolved sequestering agent. This layer is thus added as two separate components: the water, which is added with the surfactant and colorants, and the sequestering agent, which is added later.

Therefore, Cook does not teach or suggest preparing two preliminary mixtures (or layers). Rather, Cook teaches away from the claimed method of maintaining the two mixtures separately, because the sequestering agent layer is only formed upon addition of the sequestering agent to the composition, rather than being formed independently. Reconsideration and withdrawal of the rejection are respectfully requested.

*Rejection Under § 102(b) Based on GB '189*

The Examiner argues that GB '189 teaches liquid compositions which comprise two aqueous layers for the treatment of natural fibers like hair. By replacing a portion of the water in a system comprising 7.5 wt % ammonium lauryl sulphate, 25.0 wt % hexylene glycol and 67.5 wt % water with an 11-12 weight % citric acid solution, a two layer system allegedly becomes stable. The Examiner further argues that in Example 1 of GB '189, a composition comprising ethoxylated lauryl alcohol and ethylene oxide has upper and lower layers in a 58:47

weight ratio. The Examiner concludes that GB '189 teaches all of the claimed elements.

Applicants respectfully traverse this rejection as follows.

GB '189 is directed to liquid cleaning compositions which have two aqueous layers at 0°C for the treatment of natural fibers, such as hair. The compositions contain detergent, electrolyte, and a water-miscible organic solvent. GB '189 does not teach maintaining these two layers separately and only mixing them upon or immediately prior to filling the container, as claimed. Rather, the Examples of GB '189 describe making a mixture of the components which, after being shaken and left for some hours, separates into two distinct layers. The components which will ultimately form the two layers are intimately mixed together to initially form the composition, and later separate. This contrasts with the claimed method of forming two separate preliminary mixtures which are mixed together at the last minute. Therefore, there is no teaching or suggestion in GB '189 of the desirability of maintaining the layers separately as in the present invention. Reconsideration and withdrawal of the rejection are respectfully requested.

*Rejection Under § 102(a) Based on Jeschke '635*

The Examiner argues that Jeschke '635 teaches all of the claimed limitations, and notes that Applicants cannot rely upon the foreign priority document to overcome the rejection because a translation of this document has not been made of record. Accordingly, enclosed herewith is a certified translation of the priority document, German Application No. 199 26 925.4, filed June 14, 1999. As this filing date is prior to the September 23, 1999 publication date of Jeschke '635, Jeschke is now removed as a prior art reference and withdrawal of the rejection is respectfully requested.

In view of the preceding amendment, Applicants respectfully submit that the pending claims are in compliance with § 112. Based on the Remarks, Applicants respectfully

submit that the pending claims are patentable over the cited prior art and in condition for allowance. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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(Date)

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Enclosures: Mark-up version of claim 4  
Certified Translation of Priority Document  
Supplemental IDS  
Petition for Extension of Time

**Mark-up Version of Claim 4**

--4. (Amended) The method of claim 3, wherein the first preliminary mixture contains a hydrophobic substance or a substance which forms a hydrophobic substance with one or more other substance of the overall composition, the other substances being selected from the group consisting of perfumes; hydrophobic, water-insoluble solvents; and, in a case where one or more quaternary ammonium salts and one or more sulfates are present, one of quaternary ammonium salts and sulfates.--